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In The United States District Court  
For The Northern District Of Illinois  
Eastern Division

SEP 29 2005

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Commodity Futures Trading Commission,

Plaintiff,

v.

Todd J. Delay,  
Jack McCaffery, and  
John D. Lawless,

Defendants.

Civil Action No.:

05C 5619

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE DENLOW

Complaint For Injunctive And Other Equitable Relief And Civil Monetary  
Penalties Under The Commodity Exchange Act

The United States Commodity Futures Trading Commission ("Commission" or  
"CFTC"), by and through its attorneys, hereby alleges as follows:

I.

Summary

1. In October 2003, Todd J. Delay ("Delay"), Jack McCaffery ("McCaffery") and John D. Lawless ("Lawless") (collectively, "Defendants") knowingly reported non-*bona fide* sales in the cash feeder cattle market to the United States Department of Agriculture ("USDA"). The USDA included these sales in its public cash market feeder cattle report, which the Chicago Mercantile Exchange, Inc. ("CME") used to price the CME's Feeder Cattle Index ("index"), which in turn determined the final settlement price

for the October 2003 Feeder Cattle futures contract (“feeder cattle contract” or “contract”). The non-*bona fide* sales reported in the cash market created artificial prices in the October 2003 Feeder Cattle contract between October 24, 2003 and October 30, 2003. Delay, a futures broker, and certain of his futures customers, who were long the feeder cattle contract on October 30, 2003, the settlement date for the contract, made profits on those positions. Therefore, between October 24, 2003 and October 30, 2003, certain futures and options traders of the October 2003 Feeder Cattle contract lost on their positions as a result of Delay’s manipulation.

2. The Defendants have engaged, are engaging, or are about to engage in acts or practices which violate the anti-manipulation and other sections of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002).

3. Unless restrained and enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the CFTC brings this action to enjoin such acts and practices, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

## II.

### **Jurisdiction And Venue**

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against

any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

6. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

### **III.**

#### **The Parties and Other Relevant Entities**

##### **The Parties**

7. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

8. Todd J. Delay, who resides in Columbus, Ohio, was registered with the Commission as an associated person (“AP”) of Rosenthal Collins Group, LLC (“RCG”) from May 16, 2002 until September 2, 2005. In October 2003, Delay also was the branch manager for RCG’s Columbus, Ohio branch office (“Columbus office”). Since September 21, 2005, Delay has been registered as a temporary AP of New World Holdings, LLC, an independent introducing broker (“IB”). Delay is also listed as the president and a principal of DL Global Futures, which has a pending registration as an IB. In addition, Delay buys and sells cattle as an investment and markets cattle feeding investments to clients. Delay also has ownership interests in Neil Cattle, Co. (“Neil

Cattle”), a cattle feedlot in Cozad, Nebraska; Lloyd Neil & Son, a partnership that owns real estate near Cozad; and DW Feeders, LLC, a corporation located in Columbus, Ohio, that invests in feeding cattle.

9. Jack McCaffery, who resides in North Platte, Nebraska, is the president of North Platte Feeders (“NPF”), a feedlot located in North Platte, Nebraska. NPF is a futures customer of Delay and maintains hedge accounts at RCG in the name of NPF that it uses to hedge its customers’ cash cattle. Delay has power of attorney over the accounts. Delay is also a customer of NPF and feeds cattle at NPF both for himself and investors in his cattle feeding investments. McCaffery has never been registered with the Commission in any capacity.

10. John D. Lawless, who resides in Imperial, Nebraska, is the feedlot manager at Imperial Beef, a feedlot located in Imperial, Nebraska. Delay is a customer of Imperial Beef and feeds cattle at Imperial Beef both for himself and investors in his cattle feeding investments. Lawless has never been registered with the Commission in any capacity.

#### **Other Relevant Entities**

11. Rosenthal Collins Group, LLC is a registered futures commission merchant (“FCM”) with its principal place of business in Chicago, Illinois.

12. The Chicago Mercantile Exchange, Inc. is a registered entity and a designated contract market for trading feeder cattle futures contracts pursuant to Section 5 of the Act, 7 U.S.C. § 7 (2002). The CME’s principal place of business is in Chicago, Illinois. The trading venues for the feeder cattle futures contract include the CME’s trading floor in Chicago, Illinois and the CME GLOBEX electronic trading platform.

#### IV.

##### **Relevant Sections Of The Act And Regulations**

13. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2002), makes it unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.” Sections 6(c) and 6(d) of the Act further prohibit the manipulation or attempted manipulation of the market price of any commodity, in interstate commerce, or for future delivery. 7 U.S.C. § 9, 13(b) (2002).

14. Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2002), provides in relevant part that, “[i]t shall be a violation of this Act for any person to violate any bylaw, rule, regulation or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission.”

15. Commission Regulation 15.00(c), 17 C.F.R. § 15.00 (2005), defines the term “special account” as “any commodity futures or option account in which there is a reportable position.”

16. Commission Regulation 17.00(b), 17 C.F.R. § 17.00(b) (2005), provides, with exceptions not relevant here: “[I]f any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member, or foreign broker as a single account for the purpose of determining special account status and for reporting purposes.”

17. Commission Regulation 1.35(a-1)(1), 17 C.F.R. § 1.35(a-1)(1) (2005), provides in relevant part that each FCM receiving a customer’s order shall immediately upon receipt thereof prepare a written record of the order and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received.

18. Commission Regulation 1.35(a-1)(5), 17 C.F.R. § 1.35(a-1)(5) (2005), provides that only customers who provide written investment discretion to account managers are eligible for inclusion on bunched orders.

19. Commission Regulation 166.3, 17 C.F.R. § 166.3 (2005), requires that “[e]ach Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a

similar status or performing a similar function) relating to its business as a Commission registrant.”

## V.

### Facts

#### *The Chicago Mercantile Exchange's Feeder Cattle Futures Contract*

20. Feeder cattle are young steers (castrated males) that are sent to feedlots for finishing into “fed” or “fat” cattle for eventual slaughter. The CME’s feeder cattle futures contract enables cattle producers to manage their price risk more effectively and fosters price discovery in the livestock industry.

21. A CME feeder cattle futures contract consists of 50,000 pounds of feeder cattle, with a minimum price fluctuation or “tick” of \$0.00025 per pound, which equates to \$12.50 per contract. During the trading day, the maximum price increase on a single feeder cattle contract from a limit move is 120 ticks above or below the previous day’s settlement price, which equates to \$1,500 per contract. In practice, the feeder cattle futures contract is quoted in dollars per hundred-weight. The CME’s feeder cattle futures monthly listings include: January, March, April, May, August, September, October and November. During the relevant time period, to meet the specifications for inclusion in the CME feeder cattle futures contract, cattle were required to be steers of average weight between 700 and 849 pounds that were USDA graded #1 Medium or Medium/Large frame.

22. The CME’s feeder cattle futures contract’s final settlement price is cash settled based on the CME feeder cattle index; that is, no physical delivery of cattle occurs. The final settlement price for the contract is the value of the CME’s feeder cattle

index on the delivery date, which, with certain exceptions not relevant here, is the last Thursday of the contract month. The CME calculates that index on a daily basis using a weighted average of feeder cattle prices reported by the USDA for the previous seven (7) days.

23. The USDA issues a daily report of feeder cattle transactions. The report covers all types of cattle and all weight ranges. The USDA generally reports auction sales on a daily basis, but reports direct sales, which are privately negotiated transactions, on a weekly basis on Fridays. The prices at which direct sales occur, unlike auction prices, are voluntarily reported to the USDA at the discretion of the parties to the transaction. The CME extracts from the USDA reports information pertaining to reported sales of cattle meeting the specifications for inclusion in the CME feeder cattle index. Under the CME's rules, the index includes all eligible sales reported by the USDA. Because the CME calculates the feeder cattle index using a weighted average of feeder cattle sales (roughly: number of head \* average weight \* average price), the greater the size of a reported sale, the greater the effect the sale will have on the index.

24. At all relevant times, CME Rule 10202.E provided that no person shall own or control more than 1000 contracts long or short in any contract month, or 300 contracts long or short in the spot month during the last ten days of trading before expiration. CME Rule 10202.F provided that for purposes of calculating the position limits, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.



The Commission approved the CME amendments to the feeder cattle contract providing for the foregoing speculative limits on November 4, 1996.

**The Feeder Cattle Contract Closed Higher on October 24, 2003, Based on Reports of Higher Priced Cattle During the Preceding Week**

25. On Friday October 24, 2003, the USDA issued its feeder cattle report for the preceding seven days. The report included direct sales purported to have occurred earlier in the week in western Nebraska involving large numbers of higher priced cattle. After the USDA issued its report, the feeder cattle futures contract traded sharply higher and Reuters news service reported that “talk of higher trades on Friday for feeders in direct markets fueled a furious rally.” The feeder cattle contract closed at the greatest possible price (*i.e.*, “limit up”) permitted under the rules for the contract.

26. The settlement price for the October 2003 feeder cattle futures contract was based on the CME feeder cattle index value on Thursday, October 30, 2003. The index included transactions reported by the USDA on October 24, 2003, which, in turn, included direct sales reported to the USDA during the week of October 20, 2003.

**Delay, McCaffery and Lawless Caused a Series of Sham Transactions in the Cash Feeder Cattle Market to be Reported to USDA**

27. Delay, McCaffery and Lawless caused a series of direct sales to be reported to the USDA during the week of October 20, 2003. The Defendants had an expectation that the direct sales would be reported by the USDA in its Friday, October 24, 2003 report and would be included in the settlement of the CME feeder cattle index on October 30, 2003. In addition, the defendants knew that the reported prices of these sales would be factored into the interim pricing of the Feeder Cattle contract after the USDA published its report.

28. For the week of October 20, 2003 through October 24, 2003, auction and direct sale prices reported to the USDA ranged from \$86.62 to \$114.00.

**Transaction A: Purported Direct Sale of 606 Head**

29. On or about October 21, 2003, McCaffery reported a direct sale of 606 head of cattle to the USDA. McCaffery reported the sale to the USDA at the request of Delay.

30. McCaffery reported the 606 head of cattle as steers weighing between 700 and 849 pounds, Medium to Medium/Large frame. He reported the price as ranging from \$112.50 to \$113.25.

31. The owner and purported seller of the 606 head of cattle was Matt Neil ("Neil"), Delay's partner in Neil Cattle. The purported buyer of the 606 head of cattle was NPF.

32. All purported negotiations for the reported sale of the 606 head of cattle, including the price and the date of the sale, were between Delay and McCaffery.

33. The purported sale described in paragraphs 29 through 32 above never took place. No change in ownership of the cattle took place on October 21, 2003, and the cattle were never delivered to NPF. It instead was a sham transaction engineered by Delay with the purpose of reporting a sale to the USDA so that it would affect the October 2003 CME feeder cattle futures contract.

**Transaction B: Purported Direct Sale of 124 Head**

34. On or about October 21, 2003, McCaffery reported a direct sale of 124 head of cattle to the USDA. McCaffery reported the sale to the USDA at the request of Delay.

35. McCaffery reported the 124 head of cattle as steers weighing between 700 and 849 pounds, Medium to Medium/Large frame. He reported the price as ranging from \$112.50 to \$113.25.

36. The purported sellers of the 124 head of cattle were a group of individuals represented by Delay. The purported buyer of the 124 head of cattle was NPF.

37. All purported negotiations for the reported sale of the 124 head of cattle, including the price and the date of the sale, were between Delay and McCaffery.

38. The purported sale described in paragraphs 34 through 37 above never took place. No change in ownership of the cattle took place on October 21, 2003. It instead was a sham transaction engineered by Delay with the purpose of reporting a sale to the USDA so that it would affect the October 2003 CME feeder cattle futures contract.

**Transaction C: Purported Direct Sale of 666 Head**

39. On or about October 21, 2003, McCaffery reported a direct sale of 666 head of cattle to USDA. McCaffery reported the sale to USDA at the request of Delay.

40. McCaffery reported the 666 head of cattle as steers weighing between 700 and 849 pounds, Medium to Medium/Large frame. He reported the price as ranging from \$112.50 to \$113.25.

41. The purported sellers of the 666 head of cattle were a group of individuals represented by Delay. The purported buyer of the 666 head of cattle was NPF.

42. All purported negotiations for the reported sale of the 666 head of cattle, including the price and the date of the sale, were between Delay and McCaffery.

43. The purported sale described in paragraphs 39 through 42 above did not take place. No change in ownership of the 666 cattle took place on October 21, 2003. In fact, Delay and McCaffery backdated a transaction that occurred after October 21, 2003

to make it appear that the sale had occurred on the date reported to the USDA. Thus, the transaction should not have been included in the index on October 24, 2003. It instead was a sham transaction engineered by Delay with the purpose of reporting a sale to the USDA so that it would affect the October 2003 CME feeder cattle futures contract.

**Transaction D: Purported Direct Sale of 1,598 Head**

44. On or about October 21, 2003, McCaffery reported a direct sale of 1,598 head of cattle to USDA. McCaffery reported the sale to USDA at the request of Delay.

45. McCaffery reported the 1,598 head of cattle as steers weighing between 700 and 849 pounds, Medium to Medium/Large frame. He reported the price as ranging from \$112.50 to \$113.25.

46. The purported sellers of the 1,598 head of cattle were a group of individuals represented by Delay. The purported buyer of the 1,598 head of cattle was NPF.

47. All purported negotiations for the reported sale of the 1,598 head of cattle, including the price and the date of the sale, were between Delay and McCaffery.

48. The purported sale described in paragraphs 44 through 47 above did not take place. No change in ownership of the cattle took place on October 21, 2003. In fact, any sale of the 1,598 head of cattle took place before October 21, 2003, so the transaction should not have been included in the index on October 24, 2003. It instead was a sham transaction engineered by Delay with the purpose of reporting a sale to the USDA so that it would affect the October 2003 CME feeder cattle futures contract.

**Transaction E: Purported Direct Sale of 1,538 Head**

49. On or about October 21, 2003, Lawless reported a direct sale of 1,538 head of cattle to the USDA. Lawless reported the sale to the USDA at the request of Delay.

50. Lawless reported the 1,538 head of cattle as steers weighing between 700 and 849 pounds, Medium to Medium/Large frame. He reported the price as \$110.25.

51. The purported sellers of the 1,538 head of cattle were Delay and a group of individuals represented by Delay. The purported buyer of the 1,538 head of cattle was Imperial Beef.

52. All purported negotiations for the reported sale of the 1,538 head of cattle, including the price and the date of the sale, were between Delay and Lawless.

53. The purported sale described in paragraphs 49 through 52 above was a sham transaction engineered by Delay with the purpose of reporting a sale to the USDA so that it would affect the October 2003 CME feeder cattle futures contract. There was no *bona fide* transaction between Delay and Imperial Beef on October 21, 2003. In fact, Delay determined the price and date of the purported sale to Imperial Beef. Delay also determined the price and date of a subsequent sale of the cattle in November 2003 from Imperial Beef to another individual represented by Delay. Thus, in reality, Imperial Beef was interposed between the two groups of individuals represented by Delay simply to cause a transaction to be reported to USDA. Lawless only agreed to allow Imperial Beef to act as the purported buyer of the cattle because Delay had already provided an actual buyer and Imperial Beef had no risk in the purported transaction.

**The Five Purported Direct Sales Caused an Artificial Price**

54. The five purported direct sales reported by Delay, McCaffery and Lawless totaled approximately 4,531 head of cattle and constituted approximately 36 percent of the total number of head reported by the USDA. Because the five purported direct sales were reported at high average prices relative to the other auction and direct sales reported by the USDA and were incorporated into the CME Feeder Cattle Index, the purported direct sales affected the CME October 2003 Feeder Cattle futures contract and associated options contracts, and thereby caused the price of the October 2003 feeder cattle contract to become artificial after October 24, 2003. More specifically, Delay caused an artificial increase in the final settlement price of the October 2003 feeder cattle futures contract of \$2.85, from \$104.13 to \$106.98, thereby creating a profit of \$1,425 per long futures contract at expiration on October 30, 2003.

55. Options positions in the feeder cattle contract exercise into futures positions at expiration. Because the price for feeder cattle options is derived from the price for the feeder cattle futures contract, in addition to causing an artificial price for the October 2003 feeder cattle futures contract from October 24, 2003 through October 30, 2003, the five purported direct sales reported by Delay, McCaffery and Lawless also caused the prices of options on the October 2003 feeder cattle futures contract to become artificial from October 24, 2003 through October 30, 2003.

56. The following table displays volume and open interest in the feeder cattle futures contract and options on the contract for the period October 23, 2003 through October 30, 2003:

DATE	FUTURE		CALL OPTIONS		PUT OPTIONS	
	Volume	OI	Volume	OI	Volume	OI
10/23/2003	693	2824	46	2149	61	5913
10/24/2003	510	2767	235	2229	290	6115
10/27/2003	69	2759	156	2189	64	6164
10/28/2003	698	2502	36	2078	128	6253
10/29/2003	491	2463	37	1978	56	6277
10/30/2003	461	2260	41	1887	50	6326

Between October 24, 2003 and October 30, 2003, certain futures and options traders of the October 2003 Feeder Cattle contract lost on their positions as a result of Delay's manipulation..

**Delay Directly or Indirectly Held, Had an Interest In, or Controlled Futures Positions in Excess of the Applicable Speculative Limits**

57. At all relevant times, Delay maintained a "special account" as defined by Commission Regulation 15.00(c), 17 C.F.R. § 15.00 (2005), that for reporting purposes under Commission Regulation 17.00(b), 17 C.F.R. § 17.00(b) (2005), and for determining feeder cattle futures speculative position limits under CME Rule 10202 F. should have included all accounts that Delay directly or indirectly held, had a financial interest in or controlled.

58. In August 2003, the CME contacted RCG concerning the long position in the August 2003 feeder cattle contract that RCG had reported for Delay's special account. The CME advised RCG that Delay would need to reduce the position in August 2003 feeder cattle contracts before the specified reduction in the contract's speculative limit from 1,000 contracts to 300 contracts ten days before the expiration of the contract.

59. In August 2003, RCG advised Delay of the CME's request. However, rather than reducing the number of spot-month feeder cattle contracts, Delay sent a letter ("the revocation letter") to RCG stating that he was revoking his control over thirty-five (35) discretionary accounts identified in the letter because the accounts "are involved in the decision making process and in addition a majority of these accounts are feeding cattle in Nebraska and Kansas."

60. After it received the revocation letter, RCG changed the designation of the accounts from discretionary to non-discretionary and excluded the accounts from Delay's special account in August 2003 and succeeding months, including October 2003.

61. In fact, Delay exercised control over the accounts identified in the revocation letter both before and after sending the revocation letter to RCG and, in particular, during October 2003, when Delay's special account and other accounts controlled by Delay had reportable positions in the October 2003 feeder cattle contract.

62. In October 2003, Delay controlled the trading in the accounts identified in Exhibit A attached to this Complaint.

63. During each of the last ten days of October 2003, Delay directly or indirectly held, had a financial interest in, or controlled accounts whose aggregate position in the October 2003 feeder cattle contract exceeded 300 contracts, the position limit established by CME rule for trading in the last ten days of the spot month in the feeder cattle contract.

**Delay Failed to Properly Prepare, and Failed to Supervise Diligently the Preparation of, Orders and Required Records**

64. In October 2003, Delay and other Columbus office personnel prepared and submitted orders to RCG on behalf of multiple accounts ("bunched orders") that included



orders for the accounts Delay identified in the revocation letter as well as other discretionary accounts.

65. In connection with the orders Delay and other Columbus office personnel placed for the accounts identified in the revocation letter, Delay and the Columbus office personnel did not:

- a. contact each accountholder for the accounts identified in the revocation letter before or after he placed orders for the accounts;
- b. obtain specific authorization as to the exact amount of the commodity interest to be purchased or sold from each account holder for the accounts identified in the revocation letter; and
- c. prepare individual office order tickets for each account included on the bunched orders.

66. In October 2003, Delay and other Columbus office personnel did not prepare a written record of each customer order immediately upon receipt thereof and record thereon, by time stamp or other timing device, the date and time, to the nearest minute, that each order was received.

## **VI.**

### **Violations Of The Act And The Regulations**

#### **COUNT I**

#### **DELAY VIOLATED SECTIONS 6(c), 6(d), AND 9(a)(2) OF THE ACT BY MANIPULATING THE FEEDER CATTLE CONTRACT**

67. The allegations contained in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. In October 2003, Delay manipulated the feeder cattle contract by knowingly causing reports, which he knew were false, to be delivered to USDA which caused artificial prices in the October 2003 Feeder Cattle futures contract, in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13(b) and 13(a)(2) (2002).

## **COUNT II**

### **DELAY VIOLATED SECTIONS 6(c), 6(d), AND 9(a)(2) OF THE ACT BY ATTEMPTING TO MANIPULATE THE FEEDER CATTLE CONTRACT**

69. The allegations contained in paragraphs 1 through 66 are realleged and incorporated herein by reference.

70. In October 2003, Delay attempted to manipulate the feeder cattle contract by knowingly causing reports, which he knew were false, to be delivered to USDA in order to affect the final settlement price of the contract, in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13(b) and 13(a)(2) (2002).

## **COUNT III**

### **DELAY, MCCAFFERY AND LAWLESS VIOLATED SECTION 9(a)(2) OF THE ACT BY KNOWINGLY DELIVERING FALSE OR MISLEADING OR KNOWINGLY INACCURATE REPORTS CONCERNING MARKET INFORMATION THAT TENDED TO AFFECT THE PRICE OF FEEDER CATTLE**

71. The allegations contained in paragraphs 1 through 66 are realleged and incorporated herein by reference.

72. In October 2003, Delay knowingly caused reports, which he knew were false, misleading and inaccurate, to be delivered to USDA concerning market information that tended to effect the price of feeder cattle, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)(2002).

73. In October 2003, McCaffery knowingly delivered to USDA reports, which he knew were false, misleading and inaccurate, concerning market information that tended to affect the price of feeder cattle, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)(2002).

74. In October 2003, Lawless knowingly delivered to USDA a report, which he knew was false, misleading and inaccurate, concerning market information that tended to affect the price of feeder cattle, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)(2002).

75. Each false report constitutes a separate violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)(2002).

#### **COUNT IV**

#### **DELAY VIOLATED SECTION 4a(e) OF THE ACT BY EXCEEDING THE SPECULATIVE LIMITS FOR THE FEEDER CATTLE CONTRACT**

76. The allegations contained in paragraphs 1 through 66 are realleged and incorporated herein by reference.

77. During the last ten days of October 2003, Delay exceeded the speculative limits for the October 2003 feeder cattle futures contract in accounts he controlled or had an ownership interest in, in violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2002).

78. Each date on which Delay held or controlled feeder cattle contracts in excess of the CME's position limit constitutes a separate violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2002).

## COUNT V

### DELAY VIOLATED COMMISSION REGULATION 166.3 BY FAILING TO DILIGENTLY SUPERVISE RCG'S COLUMBUS OFFICE

79. The allegations contained in paragraphs 1 through 66 are realleged and incorporated herein by reference.

80. In October 2003, Delay failed to diligently supervise the Columbus office's handling of commodity interest accounts carried by RCG, in violation of Commission Regulation 166.3, 17 C.F.R. § 166.3 (2005).

## **VII.**

### **Relief Requested**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Delay liable for violating Sections 4a(e), 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 6a(e), 9, 13(a)(2), 13b and 15 (2002), and Regulation 166.3, 17 C.F.R. § 166.3 (2005); and find McCaffery and Lawless liable for violating Section 9(a)(2) of the Act, 7 U.S.C. § 13 (2002).

B. Enter an order of permanent injunction enjoining Delay and all persons insofar as they are acting in the capacity of his agent, servant, employee, successor, assign, and attorney, and all persons insofar as they are acting in active concert or participation with Delay who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Sections 4a(e), 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 6a(e), 9, 13(a)(2), 13b and 15 (2002), and Regulation 166.3, 17 C.F.R. § 166.3 (2005);

C. Enter an order of permanent injunction enjoining McCaffery and all persons insofar as they are acting in the capacity of his agent, servant, employee, successor, assign, and attorney, and all persons insofar as they are acting in active concert or participation with McCaffery who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2002);

D. Enter an order of permanent injunction enjoining Lawless and all persons insofar as they are acting in the capacity of his agent, servant, employee, successor, assign, and attorney, and all persons insofar as they are acting in active concert or participation with Lawless who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2002);

E. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. Enter an order requiring Defendants to make restitution of damages proximately caused by the Defendants' acts and practices in violation of the provisions of the Act as described herein, including pre-judgment interest;

G. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act and Regulations or (2) \$120,000 for each violation of the Act;

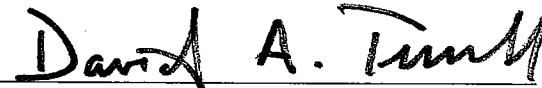
H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

I. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

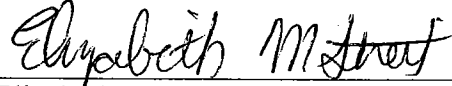
Date: September 29, 2005

COMMODITY FUTURES TRADING  
COMMISSION  
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Chicago, IL 60661  
(312) 596-0539 (Terrell)  
(312) 596-0537 (Streit)  
(312) 596-0560 (Williamson)  
(312) 596-0520 (Hollinger)  
(312) 596-0714 (facsimile)

Respectfully submitted,



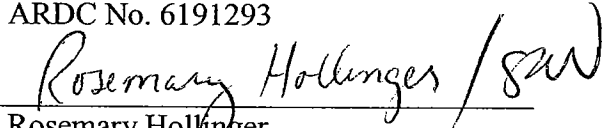
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Scott R. Williamson  
Deputy Regional Counsel  
ARDC No. 6191293



Rosemary Hollinger  
Regional Counsel  
ARDC No. 3123647

# Exhibit A

1	51605012	Delay, John-MT IRA
2	51605060	Stump, Maynard & Joyce
3	51605065	Stump, Maynard-MT IRA
4	51605066	Stump, Sam-MT IRA
5	51605070	Richardson, Kimberly -HDG
6	51606550	Delay, Todd-Hedge
7	51606555	Delay, Todd-MT IRA
8	51608297	Lloyd Neil & Son Inc. -HDG
9	51608298	Delay, Sue
10	51608299	Delay, Sue-MT IRA
11	51608313	DW Feeders L.L.C.- HDG
12	51638400	North Platte Feeders, Inc - SEC/AGR
13	51638431	NPF Inc - FBO J&T Delay & Neil - SC/AG, G7
14	51638432	NPF Inc - FBO J&T Delay & Neil - SC/AG, G6
15	51638435	NPF Inc - FBO Dec 2003 Yearling Group Lot 345
16	51638436	NPF Inc FBO Matador Calves - SEC/AGR
17	51638437	NPF Inc -Dec Yearling II - SEC/AGR
18	51650005	Lamb, David - MNGD/ HDG
19	51665002	Bader Farms - MNGD (Carl Bader, President)
20	51665003	Baumgardner, Gene - MNGD
21	51665004	Beery, Ronald
22	51665006	Burrer Farms (Corwin Burrer, Partner)
23	51665007	Colsen, Ronnie/ Sugihara, Noriyo/ Stewart, Walt
24	51665008	CTL Engineering - MNGD (Jamshidimehr VP)
25	51665015	ETI Corporation- MNGD (Jamshidimehr treasurer)
26	51665017	Fenner, Robert & Mary Kay - HDG
27	51665021	Gabriel, Gary - HDG
28	51665022	Gaus, Lawrence & Lisa - MNGD
29	51665026	Jamshidimehr, Ali & Barkhi, Reza
30	51665027	Knox, Charles & Terry
31	51665029	Laudick, Thomas & Patricia-Hedge
32	51665031	Lee, David - MNGD
33	51665032	Luke, Donald & Merrey
34	51665035	McPherson, Dorothy
35	51665037	Merritt Farms Inc.
36	51665039	Mitchell, Robert
37	51665041	Nelson, Steven
38	51665044	Nemeth, Louis & Sue
39	51665045	Norris, James & Suzanne
40	51665046	Peele, Jonathan & Natalie - Living Trust

41	51665048	Reiterman, Gary - MNGD
42	51665049	Rhoades, Ronald & Ruth Ann
43	51665050	Richardson, Thomas & Kim
44	51665051	Richardson, Thomas & Kim-Hedge
45	51665053	Satyapriya, Indira
46	51665054	Sherrick, Bruce - MNGD
47	51665055	Sims, Kennison
48	51665056	Sims, Kennison-Hedge
49	51665057	Spracklin, Richard
50	51665062	Westlake Marketing (Dan Westlake)
51	51665064	Wright, Charles - MNGD
52	51665068	S-K Consulting (Steve Kalchuer)
53	51665074	Straker, Charles
54	51665075	Dubois, Lawrence - MNGD
55	51665079	Mitchell, Don
56	51665082	Baldy, Michael - MNGD
57	51665085	Wood, Marilyn-TRUST
58	51665086	Mascara, Phyllis - MNGD
59	51665087	Ritchey, Joan & G. Frederick
60	51665090	Nelson, Elizabeth
61	51665091	Glowacky, Robert-MT IRA
62	51665092	Curtis, Charles-MT IRA
63	51665093	McCormick, Douglas-MT IRA
64	51665094	McPherson, Ron-MT IRA
65	51665095	Stillberger, Todd--Trust
66	51665098	Larsen, Thomas & Theodore
67	51665103	Crerar, Paul- MT
68	51665104	Nemeth, Sue--Trust
69	51665106	Neil, Steve-MT IRA
70	51665108	Weaver, Jerry-MT IRA
71	51665109	Bruns, Steven
72	51665111	Wood, Marilyn-MT IRA #90c516011
73	51665112	Wood, Marilyn-MT Roth IRA
74	51665113	PDP Inc.
75	51665116	S-K Advantage (Steve Kalchuer)
76	51665119	Hickox, Dennis-MT IRA
77	51665120	Hickox, Deborah-MT IRA
78	51665121	Curtis, Patricia A.--MNGD
79	51665122	Gabriel, Betty-MT IRA
80	51665123	Gabriel, Gary-MT IRA
81	51665126	Westlake, G. Daniel-MT IRA #90e515011
82	51665127	Needham, Doreen-MT



83	51665128	Wrightsel, P. Brent--MNGD
84	51665132	Horney, William-Hedge
85	51665133	McCormick, Douglas-Hedge
86	51665135	Beery, Ron-Hedge
87	51665137	S BAR B Ranch- Hedge (Jack Davies, President)
88	51665138	Glowacky, Robert-Hedge
89	51665141	MPK Land & Livestock Co LLC -MNGD/HD
90	51665142	Lee, David -HDG
91	51665144	Evans, Karen
92	51665148	Yakubov, Tracey - MNGD
93	51665150	Bessman, Wayne R.-MNGD/HDG
94	51677777	Delay, Todd-Error Account